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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772.078	02/03/2004	Toshifumi Masaki	1232-5273	4536

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NEW YORK, NY 10281-2101

EXAMINER
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STULTZ, JESSICA T

ART UNIT	PAPER NUMBER
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2873

MAIL DATE	DELIVERY MODE
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07/30/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/772,078	Applicant(s) MASAKI, TOSHIFUMI	
	Examiner Jessica T. Stultz	Art Unit 2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 5, 8 and 9 is/are pending in the application.
- 4a) Of the above claim(s) 4, 5, 8 and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election-requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION*****Election/Restrictions***

Applicant's election with traverse of Group I, claim 1, in the reply filed on May 8, 2007 is acknowledged. The traversal is on the ground(s) that the examiner has not provided evidence that the inventions are independent and that examining all three groups would not place a serious burden on the examiner. This is not found persuasive because the examiner has shown that the inventions are independent and therefore would require different searches, which would place an undue burden on the examiner, in the Restriction requirement mailed April 16, 2007.

Specifically, Group I, claim 1, is drawn to an ophthalmologic apparatus comprising a controller for comparing pupil diameter of the eye to be examined with a predetermined value, for detecting the positional shift between a position of the vertex of the cornea and the eye examining portion unit in a case where the pupil diameter of the eye to be examined is larger than the predetermined value, for detecting the positional shift between the center of the pupil of the eye to be examined and the eye examining portion unit in a case where the pupil diameter of said eye to be examined is smaller than the predetermined value, and for aligning the eye examining portion unit based on the detected positional shift, as shown in the first embodiment of Figures 7-8; Group II, claims 4-5 and 8 are drawn to an ophthalmologic apparatus comprising a controller for obtaining an amount of eccentricity, which is a distance between a central position of a pupil and the position of a vertex of a cornea, for aligning the eye examining portion unit based on the position of the vertex of the cornea in a case where the amount of eccentricity is smaller than a predetermined value, and for aligning the eye examining portion unit based on the central position of the pupil in a case where the amount of eccentricity is

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greater than the predetermined value, as shown in the second embodiment of Figures 10-12; and Group III, claim 9 is drawn to an ophthalmologic apparatus comprising a controller for effecting the alignment of an eye examining portion on the basis of positional shift between a central position of a pupil and the eye examining portion unit; wherein the controller makes the tolerance level of the alignment between said the eye examining portion unit smaller in a case where pupil diameter is smaller than a predetermined value, as shown in the third embodiment of Figures 13-15.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Fujieda US 5,889,576, herein referred to as Fujieda '576.

Regarding claim 1, Fujieda '576 discloses an ophthalmologic apparatus (Abstract) comprising: an eye examining portion unit for receiving a light beam and effecting the measurement of the eye to be examined (Column 6, line 55-Column 7, line 41, wherein a light beam from light sources "11" reaches the fundus of the eye as shown in Figures 2 and 4-5); an image pickup element for picking up the image of the front eye part of the eye to be examined (Column 6, line 55-Column 7, line 41, wherein the image pickup element comprises image forming lens "26", as shown in Figures 2 and 4-5); and a controller for comparing pupil diameter

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of the eye to be examined with a predetermined value (Column 5, line 43-Column 6, line 54 and Column 7, line 49-Column 8, line 45, wherein the pupil diameter is detected and compared to a rectangular area "110", Figures 4-7), for detecting the positional shift between a position of the vertex of the cornea and the eye examining portion unit in a case where the pupil diameter of the eye to be examined is larger than the predetermined value (Column 5, line 43-Column 6, line 54 and Column 7, line 49-Column 8, line 45, wherein when the pupil diameter is greater than the area "110", a shift between the corneal vertex "101" and the eye examining portion is determined as shown in Figure 4), for detecting the positional shift between the center of the pupil of the eye to be examined and the eye examining portion unit in a case where the pupil diameter of said eye to be examined is smaller than the predetermined value (Column 5, line 43-Column 6, line 54 and Column 7, line 49-Column 8, line 45, wherein when the pupil diameter is smaller than the area "110", a shift between the pupil center "111" and the eye examining portion is determined as shown in Figure 5), and for aligning the eye examining portion unit based on the detected positional shift (Column 5, line 43-Column 6, line 54 and Column 7, line 49-Column 8, line 45, wherein the eye examining portion is aligned based on the positional shift).

### ***Response to Arguments***

Applicant's arguments, filed September 6, 2003, with respect to claim 1 in view of Shibutani et al US 6,217,172, have been considered but are moot in view of the new ground(s) of rejection in view of Fujieda '576 as shown above.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Yancey et al US 7,001,020, Hirohara et al US 6,685,320, and Iwanaga US 6,494,577

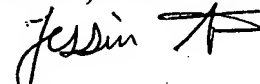
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are cited as having some similar structure to the claimed invention since they disclose ophthalmic apparatuses comprising a controller for comparing pupil diameter of the eye to be examined with a predetermined value.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica T. Stultz whose telephone number is (571) 272-2339. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on 571-272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jessica T Stultz  
Examiner  
Art Unit 2873  
July 23, 2007